

How Mandela the lawyer shaped Mandela the political leader

The future South African president invoked the 'inner morality of law', write Jeffrey Jowell and Hugh Corder

Nelson Mandela has been celebrated for his magnanimous political leadership of South Africa after 27 years in prison, but his work as a lawyer is less well known. Yet his writings make clear that his political views were in large part shaped by defending clients at the wrong end of the apartheid laws.

After leaving his rural home for Johannesburg, he found employment for a brief period as a security guard on the mines. In 1942 he was accepted by a white solicitor as an articled clerk — rare in those days — and then worked in other firms while taking a part-time law degree at the University of the Witwatersrand.

Despite the racist reality beyond the office door, including in the courts and even from staff and students at the university, he always acknowledged the benefits of just law, and the integrity of those South African lawyers who remained true to the ideals of justice. He made lifelong friendships with a number of his fellow students who later became radical lawyers or politicians, such as Joe Slovo, George Bizos, Bram Fischer and Arthur Chaskalson.

In mid-1952, Mandela established the first African firm of attorneys with Oliver Tambo (later to become the long-serving and highly respected leader of the African National Congress in exile). Mandela and Tambo occupied offices opposite the magistrates' court in cen-

tral Johannesburg and were inundated with work. In his book *Long Walk to Freedom*, Mandela wrote of the importance of the establishment of the firm as "a place where [ordinary Africans] could come and find a sympathetic ear and a competent ally... where they would not be either turned away or cheated... where they might actually feel proud to be represented by men of their own skin colour. This was the reason why I had become a lawyer in the first place..."

Through all the disruptions, arrests, banning, intimidation and harassment of the next decade, and as his political role within the ANC and more broadly grew, Mandela continued to practise law, largely through court appearances in defence of black South Africans. He relished such appearances, writing in *Long Walk*: "I could be rather flamboyant... I did not act as though I were a black man in a white man's court, but as if everyone else — white and black — was a guest in my court... I enjoyed cross-examinations, and often played on racial tensions."

The organised legal profession was not always supportive of him. When he was banned for the first time, the Law Society of South Africa sought his removal from the professional roll on the ground that his political activities amounted to dishonourable conduct. But Mandela challenged the decision. Leading (white) counsel appeared without charge for him, and the (white) judge dismissed the application, awarding costs against the Law Society.

His philosophy was probably most articulately expressed in trials in which he was the accused. In the Pretoria Magistrates' Court in late 1962, he was accused of inciting others to strike, and of leaving the country without a valid passport. Although represented by counsel, he conducted his own defence. Before pleading to the charges, he applied for the recusal of the presiding magistrate not, as he repeatedly stressed, on per-

sonal grounds, but because "I fear that I will not be given a fair and proper trial... [and because] I consider myself neither legally nor morally bound to obey laws made by a Parliament in which I have no representation".

He said that it was against "the elementary principles of justice to entrust whites with cases involving the denial by them of basic human rights to the African people". His closing speech invoked the spirit of democracy and equality that he considered the true heritage of traditional African society and he appealed to the inner morality of law, with which apartheid law did not conform.

Commitment to just law and fidelity to the rule of law surely explain the attitude to the courts of President Mandela in South Africa after 1994. He warmly welcomed the unanimous first judgment of the Constitutional Court outlawing the death penalty despite the political unpopularity of that decision.

Later that year, the Constitutional Court held that both Parliament and the President had acted unconstitutionally. Although the challenge in that case was brought by the National Party (the ruling party in the previous apartheid regime), President Mandela immediately issued a statement saying that he fully accepted the court's decision and that it showed that no person was above the law, a fundamental aspect of the new constitutional dispensation.

How rare for a politician in any country to respond in that way to an adverse decision by "unelected judges". Yet how important was that response for the acceptance of the principles of the rule of law and judicial independence in the new South Africa. The commitment of the present leadership to those principles sometimes seems uncertain, but their endurance in large part is due to the values and experience of Mandela the lawyer.

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